

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

GREGORY GALBERTH,

Plaintiff,

v.

9:14-CV-115 (BKS/ATB)

**C. DURKIN, *Sergeant, Clinton Correctional
Facility, et al.,***

Defendants.

Appearances:

Gregory Galberth

03-A-0661

Great Meadow Correctional Facility

P.O. Box 51

Comstock, NY 12821

Plaintiff, pro se

Denise P. Buckley, Esq.

Hon. Eric T. Schneiderman

Office of New York State Attorney General

The Capitol

Albany, NY 12224

Attorney for Defendants

Hon. Brenda K. Sannes, U. S. District Judge

MEMORANDUM-DECISION AND ORDER

Pro se Plaintiff Gregory Galberth brought this action against Defendants C. Durkin, Shawn P. Hamelin, B. Plumbly, R. Sears, W. Bisso, R. Russell, E. Barnes and F. Tuller under 42 U.S.C. § 1983 alleging that Defendants violated his constitutional rights in four separate excessive force incidents while the Plaintiff was an inmate at the Clinton Correctional Facility. Dkt. No. 1. On December 1, 2016, Defendants filed a motion for summary judgment seeking

dismissal of the complaint in its entirety. Dkt. No. 91. Plaintiff filed a response in opposition to the motion on August 21, 2017 (Dkt. No. 124), and Defendants filed a reply on August 28, 2017 (Dkt. No. 125). This matter was referred to United States Magistrate Judge Andrew T. Baxter who, on August 31, 2017, issued an Order and Report-Recommendation recommending that Defendants' motion for summary judgment be granted with respect to the excessive force claims as against defendants Russell, Barnes, Hamelin, Tuller, Sears, Bisso, and Durkin in connection with the November 5, 2011 use of force, and otherwise denied. Dkt. No. 128. Magistrate Judge Baxter advised the parties that, under 28 U.S.C. § 636(b)(1) and Local Rule 72.1(c), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. Dkt. No. 128, at 19. No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts it in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 128) is **ADOPTED** in its entirety; and it is further


ORDERED that Defendant's summary judgment motion (Dkt. No. 91) is **GRANTED** only with respect to the excessive force claims as against Defendants Russell, Barnes, Hamelin, Tuller, Sears, Bisso, and Durkin in connection with the November 5, 2011 use of force and otherwise **DENIED**; and it is further

ORDERED that Defendants Russell, Barnes, Hamelin, Tuller, and Durkin are
DISMISSED as Defendants from this action; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Memorandum-Decision
and Order in accordance with the Local Rules of the Northern District of New York.

IT IS SO ORDERED.

Dated: September 27, 2017
Syracuse, New York


Brenda K. Sannes
U.S. District Judge